IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15614 of 2003

with

SPECIAL CIVIL APPLICATION No. 17509 of 2003

with

SPECIAL CIVIL APPLICATION No. 17510 of 2003

with

SPECIAL CIVIL APPLICATION No. 11449 of 2002

with

SPECIAL CIVIL APPLICATION Nos.1855 and 1856 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MERCANTILE COOPERATIVE BANK LTD. - Petitioner(s)
Versus
HARSHADRAI PARIKH & 22 - Respondent(s)

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Appearance :

MR RAVINDRA SHAH for Petitioner(s) : 1,MRS KANAN R SHAH for Petitioner(s) : 1,
MR DIPAK C RAVAL for Respondent(s) : 1, 4,7 - 12, 14,
MR PRAKASH K JANI for Respondent(s) : 2,5 - 6, 19,
SERVED BY AFFIX.(N) for Respondent(s) : 3,
NOTICE NOT RECD BACK for Respondent(s) : 13,
NOTICE UNSERVED for Respondent(s) : 15 - 16, 20,
NOTICE SERVED for Respondent(s) : 17,21 - 23.
MR MK VAKHARIA for Respondent(s) : 18,
MR AMAR P DAVE for Respondent(s) : 18,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 30/03/2006

COMMON ORAL JUDGMENT

1. Special Civil Application No.15614 of 2003 is preferred against the order dated 12.9.2003 passed by the Tribunal below Stay Application, whereby interim stay against the execution of the award is granted with the further directions that the applicants shall not transfer or assign any rights in their property.

2. Special Civil Application No.17509 of 2003 is preferred for challenging the interim order passed by the Tribunal in below Stay application in Appeal No.824 of 2003, whereby the stay has been granted against execution of the award with the further direction of not to transfer property pending the appeals.

3. Special Civil Application No.17510 of 2003 is preferred for challenging the same type of order of the Tribunal passed below Stay application in Appeal No.904 of 2003.

4.Special Civil Application No.11449 of 2002 is preferred for challenging the order passed by the Tribunal below Stay application in Appeal No.697 of 2001, whereby the judgement and the award of the Nominee is stayed till the dismissal of the appeal.

5.Special Civil Application No.1855 of 2004 is preferred for challenging the order passed by the Tribunal below Application for condonation of delay, whereby the delay is condoned and the appeals are ordered to be listed for hearing on board.

6.Special Civil Application No.1856 of 2004 is for challenging the order passed by the same type of order of the Tribunal passed below application for condonation of delay.

7.When this Court considered the matter earlier, this Court (Coram: M.S. Shah, J.) passed the following order in Special Civil Application No.11449 of 2002:

> " RULE returnable on 7th April, 2003.
>
> Ms Banna Dutta waives service of Rule for the respondents.
>
> 2. Heard Mr Ravindra R Shah for the petitioner and Mr BJ Shelat with Ms Banna Dutta for the respondents.
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> 3. Until further orders, the Gujarat State Cooperative Tribunal shall not proceed with the hearing of Appeal No.697 of 2001. During pendency of this petition, the respondent - original defendants shall deposit a sum of Rs.5 lacs as already directed by this Court on 16-10-2001 in the following installments:-
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> (i) Rs. 1 lac by 20th January, 2003.

(ii) Another Rs.2 lacs by 28th February, 2003, and
(iii) Another Rs.2 lacs by 31st March, 2003.

On condition that the respondents file an undertaking not to transfer, alienate or dispose of in any manner the immovable properties of respondents No.1 to 3 herein and their plant and machinery without prior permission of this Court and that the respondents shall pay the amounts as per the aforesaid direction within the stipulated time limit (such an undertaking shall be filed by 27th December, 2002), the petitioner - Bank shall not execute the decree passed in its favour until further orders.

4. In the meantime, it will be open to either of the parties to move this Court for appropriate orders in case any installment is not paid within the stipulated time limit.

5. It is clarified that pendency of this petition or the aforesaid interim order does not preclude the parties from negotiating for settlement on such terms as may seem proper to the parties.””

8.When this Court considered the matter earlier, this Court (Coram: K.M.Mehta, J.) passed the following order in Special Civil Application Nos.1855 and 1856 of 2004:

“ Learned advocate for the petitioner raised a question in this petition whether the order of the Tribunal is wholly without jurisdiction, in as much as, the dispute for recovery of the dues of the bank against the firm, its partners and the guarantors is a dispute under Section 74 of the Multi - State Cooperative Societies Act, 1984 which provides that such dispute shall be referred to the Central Registrar for decision and no Court shall have jurisdiction to entertain any suit or another proceeding in respect of such dispute.

Mr. Shah learned advocate for the petitioner submitted that identical petition being Special Civil Application No. 11449 of 2002 is admitted by this Hon'ble Court (Coram : M.S. Shah, J.).

In view of the above position, Rule returnable on 10-3-2004. Ad-interim relief in terms of paragrap No.7-D is granted till then .”

9.When this Court considered the matter earlier, this

Court (Coram: Kundan Singh, J.) passed the following order in Special Civil Application No.15614 of 2003:

> " This petition has been filed challenging the interim order dated 12-9-2003 passed by the Gujarat State Cooperative Tribunal in stay application filed in Appeal No. 696 of 2003. The Tribunal has stayed the judgment and award of the Board of Nominees passed in Lavad Case No. 148 of 1999 holding that the respondents are not the borrowers or guarantors. It is also held by the Tribunal that the Bank has allotted fund by the sanction letter exh.5/17 and the Bank was required to take 80% money from the borrower but that amount has not been taken by the Bank. Hence the Bank has violated the terms and conditions.
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> Learned counsel for the petitioner stated that three appeals were filed by the judgment debtors and in two appeals while deciding the question of interim relief the Tribunal has observed that the Tribunal has no jurisdiction. Unfortunately, in the present case there is nothing on record to show that such plea was raised. But in fact, such plea of jurisdiction was also raised before the Tribunal but has not been discussed by the Tribunal.
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> Learned counsel for the petitioner seeks a week's time to furnish translated copy of the sanction letter exh.5/17 along with other documents which are in Gujarati language showing that question of jurisdiction was raised in the present before the Tribunal. Put this matter thereafter."

10.When this Court considered the matter earlier, this Court (Coram: M.S. Shah, J.) passed the following order in Special Civil Application Nos.17509 and 17510 of 2003:

> Rule.
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> 2. Since the appeals are ordered to be heard on February 10, 2004, this Court does not propose to grant any ad-interim relief at this stage. However, if the appeals are not heard and decided by February 27, 2004, it will be open to the petitioner bank to move this Court for interim relief.
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> 3. It is clarified that, pendency of these petitions does not preclude the Tribunal from hearing the appeals, on the contrary the Tribunal is directed to hear and

decide the appeals expeditiously.””

11.Today when the matter is taken up for hearing further, the learned Counsel appearing for both the sides declared that the appeals are pending before the Tribunal for final hearing and they are as such listed on board for hearing, save and except appeal No.696 of 2003 for which Special Civil Application No.15614 of 2004 is preferred.

12.Upon hearing the learned Counsel for the parties, it appears that the petitions are at the stage of interim order passed by the Tribunal below Stay Applications, save and except SCA No.1855 and 1856 of 2004, which are at the stage of condonation of delay.

13.The principle contention of the learned Counsel appearing for the petitioners in all the petitions are that the Tribunal ought not to have stayed the execution of the judgement and award of the Nominee unconditionally, more particularly when it was a case of money decree or an award. It is also the contention of the petitioners that the Tribunal has no jurisdiction to entertain the appeal. It also appears that one of the contentions of Respondent, inter alia, is that in view of the provisions of Multi State Cooperative Societies Act, the question may be required

to be considered is where the learned Nominee will have the jurisdiction to entertain dispute under Section 96 of the Gujarat Cooperative Societies Act or could it be said as proper forum entrusted with the Board of adjudicating the dispute.

14.In my view when the question at large are to be considered by the Tribunal it is not necessary for this Court to examine such questions at the stage of interim stay application and/or the application for condonation of delay and such questions can be raised before the Tribunal by the concerned parties and, in any case, they will have to be considered by the Tribunal while deciding the appeal finally. It appears that in Special Civil Application No.11449 of 2002 in view of the interim order passed some amount is deposited towards the award and the learned Counsel appearing for the petitioners submits that the said amount was accordingly deposited. So far as Special Civil Application No.15614 of 2004 is concerned it has been stated that appeal No.696 of 2004 is finally disposed off as per order dated 7.2.2006 of the Tribunal.

15.Therefore, all the petitions, except Special Civil Application No.15614 of 2004 are disposed of with the directions that the parties to the proceedings of the

concerned appeal who are also respective parties in the present petitions may raise appropriate contentions, as may be available in law, before the Tribunal and the Tribunal shall decide the appeal finally as early as possible preferably within a period of three months from the date of receipt of the order of this Court. It is made clear that the contentions of both the sides in the concerned appeal shall remain open and the rights of neither side shall not get concluded by disposal of the present proceedings. Special Civil Application No.15614 of 2004 shall stand disposed off as having become infructuous. Rule discharged in respective petitions. No order as to cost.

30.3.2006 **(Jayant Patel,J.)**

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